

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES LEE MARLOW, II,

Petitioner,

v.

MARGARET MILLER-STOUT,

Respondent.

CASE NO. C11-1548 MJP

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DENYING PETITIONER'S MOTION
FOR STAY

THE COURT, having reviewed petitioner's petition for writ of habeas corpus, the Report and Recommendation of Brian A. Tsuchida, United States Magistrate Judge (Dkt. No. 26), the Petitioner's objections (Dkt. No 29), the Petitioner's motion for a stay of the case (Dkt. No. 30), and the remaining record, hereby DENIES the Petitioner's motion for a stay and ADOPTS the Report and Recommendation.

Petitioner James Lee Marlow II's petition for habeas review must be dismissed as procedurally barred. Mr. Marlow argues in his objections that he properly presented his complaints to the Washington Supreme Court, and that this is agreed to by the Respondent. (Dkt. No. 29 at 2.) This is not accurate. The response from Respondent that Mr. Marlow refers to does

1 acknowledge Mr. Marlow appealed his claims to the Washington Supreme Court, but it notes
2 that he only did so in his second personal restraint petition, which the court dismissed as time
3 barred. (Dkt. No. 20 at 1.) Petitioner argues in his objections that procedural bars applied to him
4 have resulted in a “miscarriage of justice.” As discussed in the Report and Recommendation,
5 Petitioner fails to establish facts supporting this allegation. (Dkt. No. 26 at 6.) Petitioner also
6 fails to make a “substantial showing of the denial of a constitutional right” to support issuance of
7 a Certificate of Appealability. *See* 28 U.S.C. § 2253(c)(3). His assertion that he is entitled to one
8 as an innocent person, without supporting facts, is not sufficient. The Court ADOPTS the Report
9 and Recommendation.

10 Petitioner separately moves for a stay of this case while he files a motion for
11 discretionary review in the Washington Supreme Court. As noted in the Report and
12 Recommendation, this action is time barred. (Dkt. No. 26 at 4.) There is no basis to grant a stay
13 in these circumstances. The motion is DENIED.

14 The Court ORDERS:

15 (1) The Court DENIES Petitioner’s motion for a stay.

16 (2) The Court ADOPTS the Report and Recommendation.

17 (3) Petitioner’s proposed 28 U.S.C. §2254 habeas petition is DISMISSED, with
18 prejudice, because the claims are unexhausted and procedurally defaulted, a state that
19 cannot be cured due to time limitations.

20 (4) Petitioner is DENIED issuance of a certificate of appealability.

21 (5) The Clerk shall send copies of this Order to all parties and to Judge Tsuchida.

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2 Dated this 1st day of February, 2013.

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5 Marsha J. Pechman
6 Chief United States District Judge
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